as one of those cases where a court feels it necessary to abet legal peculiarities in order to accomplish what it considers substantial justice.

EFFECT OF CHARTER ON LIMITATION OF SHIPOWNER'S LIABILITY.—According to the civil law, the owners of a ship were responsible and liable for all the obligations of the master, whether arising *ex contractu* or *ex delicto*, without limitation, and the common law follows the civil law in this respect.[1] But according to the general maritime law, originating in the maritime usages in the Middle Ages, particularly in the Mediterranean, this liability was limited to the value of the vessel, and the owner might escape it by abandoning his ship or his interest in favor of the creditor or party injured.[2] But while this is the general maritime law, it is only so far operative in any country as it has been adopted by the laws and usages of that country.[3] In the United States, Congress has passed acts adopting a rule practically the same as the general marine law to encourage shipping and the investment of capital in that business, so that in the courts of this country a shipowner may proceed to limit his liability for loss or damage incurred without his privity or knowledge to the value of his interest in the vessel and her freight then pending.[4]

Though statutes passed in Massachusetts and Maine in 1818 and 1821 and the first Act of Congress in 1851 limited the liability of shipowners to some extent, the present system cannot be said to have been

---

ton, *supra*. Since the liability of a carrier is independent of negligence, there seems even less reason for applying the doctrine of subrogation than in the other cases we have considered. See Home Ins. Co. *v.* Atchison etc. R. R. (1893) 19 Colo. 46, 55, 34 Pac. 281.

[1]See The Rebecca (U. S. D. C. 1831) 1 Ware *188; Levinson *v.* Oceanic Steam Nav. Co. (C. C. 1876) 15 Fed. Cas. No. 8292, noted in 17 Alb. L. J. 285.

[2]Consolato del Mare, c. 33; Ordonnance de la Marine of Louis XIV, Bk. 4, Tit. 4, Art. 4; Grotius, De Jure Pace et Belli, Bk. 2, c. 11, § 13; Maritime Code of Charles II (Sweden) part 1, c. 16; Emerigon, Contrats à la Grosse, c. 4, § 11.

[3]The Scotland (1881) 105 U. S. 24, 28. Some of the principles have been adopted and extended in England in 7 Geo. II, c. 15 (1734); 26 Geo. III, c. 86 (1786); 53 Geo. III, c. 159 (1813); 17 and 18 Vict. c. 104 (1854); 24 and 25 Vict. c. 10 (1862); 57 and 58 Vict. c. 60 (1894).

[4]Act of March 3rd, 1851, c. 46, and Act of June 26th, 1884, c. 121, to be found in U. S. Comp. Stat. (1913) §§ 8021-8028; see 9 Columbia Law Rev. 77. The rules of England and the United States are often very different, because England has not adopted the marine law in full. Thus the English courts have held that in case of a collision the owner's liability is limited to the value of the ship and the freight pending immediately before the collision, Brown *v.* Wilkinson (1846) 15 M. & W. *391, while the American rule is that the limit is the value of the vessel after the accident and at the end of the voyage. Norwich Co. *v.* Wright (1871) 80 U. S. 104. Where the ship is lost at sea, the voyage is terminated for the purpose of fixing the owner's liability when the ship has sunk and is lying at the bottom of the sea. Her value at that time is the limit of the owner's liability, and no freight except what is earned is to be estimated in fixing the amount of his liability. The City of Norwich (1886) 118 U. S. 468, 492, 6 Sup. Ct. 1150.

fairly started in this country till the decision of the Supreme Court in 1871 holding that the statute was applicable to cases of collision, and indicating the proper course of procedure.[5] Now the right extends to all claims for damage occurring without the privity or knowledge of the owner when they arise *ex delicto,* whether through some positive act of misfeasance or through neglect, where privity cannot be imputed to the owner.[6] Moreover, the right to limit liability is not waived by the owner's contesting the suit or libel, but he may wait and institute proceedings for limitation as against the decree after recovery by the libelant.[7]

The question whether under the statute a shipowner may ever limit his liability for loss or injuries caused by the unseaworthiness of the vessel, where there is a charter, has never been decided by the Supreme Court, but in *The Julia Luckenbach* (2 C. C. A. 1916) 235 Fed. 388, where there was a charter containing the usual clauses stipulating delivery and maintenance of the vessel in a seaworthy condition during the charter term, it was held that the owner could not limit his liability for a loss occurring during such term due to her unseaworthiness. The ground of the decision was that the owner could not limit his liability against his express personal contract in the charter. It is the rule that the limited liability statutes in this country do not apply to cases of breach of an express personal contract by the owner.[8] Every charter or agreement, oral or written, for the hire of a ship contains a so-called implied warranty that the ship shall be seaworthy and fit for the purpose chartered for. This is a duty imposed by law, and a breach of that implied warranty is a tort or breach of duty rather than a breach of a personal undertaking, so that, where it occurs without the privity of the owner and cannot be imputed to him through his own negligence, he should be allowed to limit his liability under the statute.[9] However, where, as in *The Maria Luckenbach, supra,* the

---

[5]Benedict, Admiralty, § 518; in that case, Norwich *v.* Wright, *supra,* the right was held to extend to all claims for damage to goods on board and damage to the other vessels and their cargoes by collision.

[6]U. S. Comp. Stat. (1913) §§ 8021-8028. Thus cases of loss by fire, Providence & N. Y. S. S. Co. *v.* Hill Mfg. Co. (1883) 109 U. S. 587, 3 Sup. Ct. 379, or personal injury and death, fall within the statute, Butler *v.* Boston etc. S. S. Co. (1889) 130 U. S. 527, 9 Sup. Ct. 612, whether the person or thing damaged by the vessel was on water or land; and even claims for salvage are included. The San Pedro (1912) 223 U. S. 365, 32 Sup. Ct. 275.

[7]Monongahela Riv. Consol. Coal & Coke Co. *v.* Hurst (6 C. C. A. 1912) 200 Fed. 711. The insurance on the vessel is no part of the owner's interest in the ship or freight within the meaning of the law, and does not enter into the amount for which the owner is held liable. The City of Norwich, *supra.*

[8]Great Lakes Tow. Co. *v.* Mills Trans. Co. (6 C. C. A. 1907) 155 Fed. 11.

[9]"Neither can the proposition of the appellant be maintained, that the statute does not apply, because there was in this case a personal contract on the part of the owners, either express or in the form of an implied warranty, that the vessel was seaworthy. In nearly all the instances which the statute expressly enumerates as those to which the limitation of liability applies, there is necessarily an implied warranty, and frequently an express agreement in the form of a bill of lading; so that, if the contention of the complainant is correct, the wings of the statute would be effectually clipped. That there may be certain contracts, relating not so much

owner expressly contracts in the charter or elsewhere that the vessel shall in fact be seaworthy, he may well be held absolutely liable for breach of this express warranty, which is really a personal contract.[10]

---

to the navigation of the ship as to fitting her for sea, by which the owners charge personally their own credit, and which do not come within the statute, may be well contended, without at all touching the principles here involved." Quinlan *v.* Pew (1 C. C. A. 1893) 56 Fed. 111, 119. See the opinion of Ward, J., in The Loyal (2 C. C. A. 1913) 204 Fed. 930; but see *contra,* the opinion of Noyes, J., in the same case.

[10]Benner Line *v.* Pendleton (2 C. C. A. 1914) 217 Fed. 497.